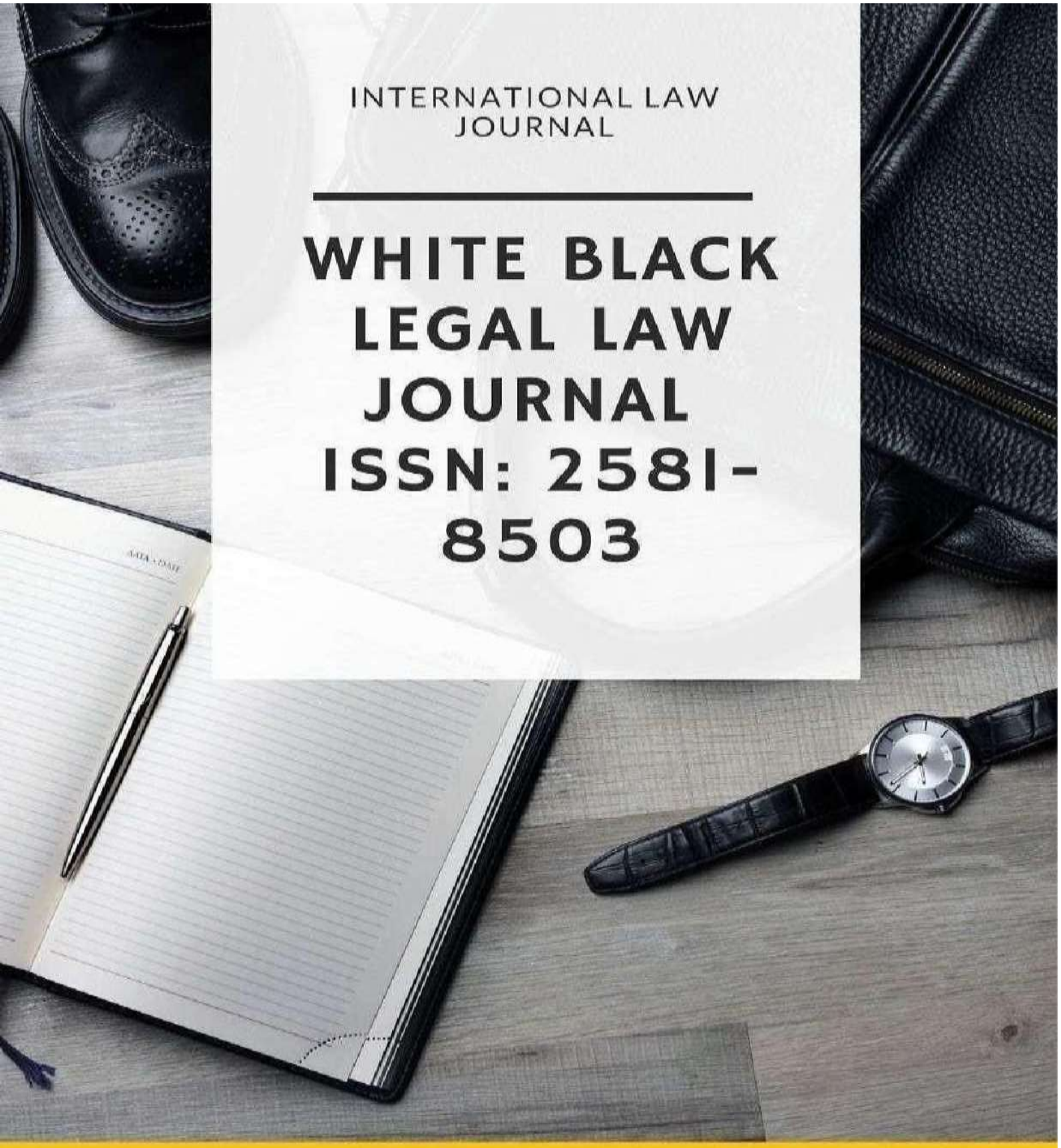

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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SOCIAL SECURITY AS A HUMAN RIGHT: A STUDY OF CONSTRUCTION WORKERS IN INDIA

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I. Introduction

The conceptualization of social security as a fundamental human right has evolved significantly since the mid-20th century, transitioning from a philanthropic ideal to a binding legal obligation under international law. At its core, the right to social security ensures that individuals can maintain a dignified standard of living when faced with contingencies such as sickness, disability, old age, or unemployment. For the global Labour force, particularly those in the informal sector, this right is not merely a legal abstraction but a vital mechanism for survival. In the Indian context, the construction industry represents one of the largest segments of informal employment, second only to agriculture. This sector is characterized by its migratory nature, precarious working conditions, and a lack of institutionalized employer-employee relationships, making the realization of social security rights both a moral imperative and a logistical challenge. The Universal Declaration of Human Rights (UDHR, 1948) explicitly recognizes the right to social security under Article 22, asserting that everyone, as a member of society, has the right to social protection through national effort and international cooperation. This was further solidified by the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), which mandates that states parties recognize the right of everyone to social security, including social insurance. For construction workers in India, these international standards provide a normative framework, yet the gap between international aspirations and local realities remains vast. The transient nature of construction sites often means that workers fall through the cracks of traditional welfare systems, which are typically designed for formal, sedentary employment.

In India, the constitutional mandate for social security is derived from the Directive Principles of State Policy. Articles 41 and 42 of the Indian Constitution direct the State to ensure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and

disablement, and to provide just and humane conditions of work. While these principles are not justiciable in a court of law, they serve as the guiding light for legislative action. The construction sector, employing over 50 million people, serves as the backbone of India's infrastructure development, yet the workers themselves often live in a state of chronic insecurity. Their vulnerability is compounded by low literacy levels, lack of collective bargaining power, and the intermittent nature of their work, which prevents the accumulation of long-term benefits. The human rights approach to social security shifts the focus from charity to entitlement. When social security is viewed as a human right, the State becomes the primary duty-bearer, responsible for creating an environment where workers can claim their benefits without fear or bureaucratic hindrance. For construction workers, this includes access to healthcare, maternal benefits, disability compensation, and old-age pensions. However, the implementation of these rights is often hampered by the complex sub-contracting chain prevalent in the industry. The presence of multiple intermediaries makes it difficult to hold any single entity accountable for the workers' welfare, leading to a systemic dilution of rights. Furthermore, the socio-economic profile of construction workers in India reveals a high concentration of marginalized communities, including Dalits, Adivasis, and landless Labourers from impoverished states like Bihar, Odisha, and Uttar Pradesh. For these groups, social security is a tool for social justice and redistribution. Without a robust social safety net, these workers are trapped in a cycle of debt bondage and intergenerational poverty. The lack of social security is not just an economic failure; it is a violation of the Right to Life enshrined in Article 21 of the Indian Constitution, which the Supreme Court has interpreted to include the right to live with human dignity. Therefore, this study aims to examine the legal and socio-economic dimensions of social security for construction workers in India. It seeks to analyze the effectiveness of existing legislative frameworks, such as the Building and Other Construction Workers (BOCW) Act, and to identify the barriers that prevent the actualization of social security as a human right. By focusing on the lived experiences of these workers, the research highlights the urgent need for a more inclusive, portable, and rights-based social security regime that accounts for the unique challenges of the informal construction sector.

II. Legislative Framework and the BOCW Act

The primary legislative intervention for the welfare of construction workers in India is the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and the accompanying Welfare Cess Act. These laws were enacted after

decades of advocacy by Labour unions and civil society groups who recognized that general Labour laws were insufficient for the construction sector's unique needs. The BOCW Act mandates the establishment of Welfare Boards in every state, which are funded by a cess a tax of 1% to 2% levied on the cost of construction projects. This fund is intended to provide benefits such as medical assistance, maternity cover, accident insurance, and pensions to registered workers. Despite the progressive intent of the BOCW Act, its implementation has been fraught with paradoxes. One of the most significant issues is the massive underutilization of the collected cess funds. Reports from the Comptroller and Auditor General (CAG) and various judicial interventions have pointed out that while billions of rupees have been collected, only a fraction has reached the intended beneficiaries. This wealth amidst poverty scenario highlights a systemic failure in the administrative machinery. The Welfare Boards often lack the staff and infrastructure to handle registrations and claims, leading to a bottleneck that denies workers their rightful benefits. Registration remains the biggest hurdle for construction workers. To qualify for benefits, a worker must prove that they have worked for at least 90 days in the preceding year. In a sector where employment is casual and undocumented, obtaining a work certificate from a contractor is nearly impossible. Many contractors are reluctant to provide such documentation to avoid legal liabilities or the payment of benefits. Consequently, a vast majority of the construction workforce remains invisible to the State, unable to access the very funds that were collected in their name. This exclusion is a direct infringement on their right to social security.

The portability of benefits is another critical challenge. Construction workers are often internal migrants who move across state borders in search of work. However, the Welfare Boards operate on a state-specific basis. A worker registered in West Bengal often finds their registration invalid or useless when they migrate to a site in Karnataka. This lack of a national, portable social security identity card creates a fragmented citizenship, where rights are tied to geography rather than the individual. In a globalized economy that relies on Labour mobility, the failure to provide portable social security is a significant policy gap. Judicial activism has played a crucial role in pushing the government toward better implementation. In the landmark case of *National Campaign Committee for Central Legislation on Construction Labour v. Union of India*, the Supreme Court expressed its dismay over the pathetic implementation of the BOCW Act. The court noted that the funds meant for the poor and downtrodden were being diverted for other purposes or sitting idle in banks. Despite such clear judicial mandates, the administrative response has been sluggish. The transition to digital platforms for registration,

while intended to improve efficiency, has often ended up excluding those on the wrong side of the digital divide. Finally, the introduction of the Code on Social Security (2020), which seeks to amalgamate various Labour laws, has met with mixed reactions. While the Code promises a more universalized approach to social security, critics argue that it might dilute the specific protections afforded to construction workers under the BOCW Act. There are fears that the dedicated cess fund might be subsumed into a general pool, reducing the targeted impact on this vulnerable group. The legislative framework, therefore, stands at a crossroads, where the promise of rights-based protection is constantly challenged by administrative apathy and shifting policy priorities.

III. Socio-Economic Vulnerabilities

The daily reality of a construction worker in India is one of extreme physical Labour, environmental hazards, and systemic neglect. The worksite is often a place of high risk, where safety protocols are frequently ignored to save costs. Accidents are common, ranging from falls from heights to injuries from heavy machinery. Without social security, an injury to the primary breadwinner often pushes an entire family into absolute destitution. The right to health, as an extension of the right to social security, is virtually non-existent for these workers, who rely on expensive private clinics or overburdened public hospitals. Living conditions at construction sites further exacerbate these vulnerabilities. Many workers live in makeshift shanties provided by the contractor, which lack basic amenities like clean drinking water, sanitation, and electricity. These Labour colonies are often breeding grounds for communicable diseases. For women workers, the situation is even more dire. They face the double burden of physical Labour and domestic chores, often in environments that lack separate toilets or crèche facilities for their children. The absence of maternity benefits means that many women work until the final days of pregnancy and return to work shortly after childbirth, risking their health and that of their infants.

Economic insecurity is a constant shadow. Wages in the construction sector are often paid on a piece-rate basis or through intermediaries (the *Jamadars* or *Thekedars*), who take a significant cut as commission. Delay in payments is a chronic issue, leaving workers unable to meet even their basic nutritional needs. Because they lack formal contracts, they have no recourse to legal action for wage theft. This lack of income security is a direct violation of the principles of Decent Work as defined by the International Labour Organization (ILO). Social

security is intended to provide a cushion against such wage volatility, but for the Indian construction worker, this cushion remains elusive.The education of children is another casualty of the construction worker's life. Due to constant migration, children are often pulled out of school to accompany their parents. While the BOCW Act provides for educational assistance, the procedural hurdles in claiming these benefits mean that most children end up as child Labourers or remain unskilled, continuing the cycle of poverty. The failure of the state to provide a social safety net for the family unit as a whole undermines the human right to development for the next generation. Psychologically, the life of a construction worker is marked by a sense of alienation. They build the modern malls, luxury apartments, and corporate offices of New India, yet they are socially and spatially excluded from these very spaces. This sense of being a disposable Labour force contributes to mental health struggles, which are rarely addressed in Labour policy. Social security, in this context, is not just about money; it is about providing a sense of belonging and recognition by the State. It is a tool for social inclusion that acknowledges the worker's contribution to the nation's progress. The vulnerability is further compounded during national crises, as seen during the COVID-19 pandemic. The sudden lockdown led to a massive exodus of construction workers from urban centers. Without a social security net or cash transfers, thousands were forced to walk hundreds of miles to their villages. This crisis exposed the fragility of the informal Labour market and the absolute necessity of a robust, universal social security system. It highlighted that in the absence of state-led protection, the right to life for the poor is essentially a right to suffer.

IV. Barriers to Universalization: Bureaucracy, Informality, and Apathy

The path to realizing social security as a human right for construction workers is blocked by several structural and administrative barriers. The primary barrier is the informality of the sector itself. Unlike the formal sector, where there is a clear employer-employee relationship and a fixed workplace, the construction sector is fluid. Workers are often employed by small-scale contractors who operate outside the regulatory net. This makes it difficult for the State to enforce compliance with social security laws. The ghost nature of many construction firms allows them to evade the BOCW cess, thereby depriving the welfare fund of essential resources. Bureaucratic apathy and red tape constitute the second major barrier. The process of registration and claiming benefits is often designed in a way that is hostile to the illiterate or semi-literate worker. The requirement for multiple identity proofs, bank accounts, and work certificates creates a documentation barrier. In many cases, workers are forced to pay bribes to

middle-men or lower-level officials just to get their names on the registry. The administrative cost of claiming a benefit often exceeds the value of the benefit itself, discouraging workers from engaging with the system altogether.

There is also a significant information gap. Many construction workers are unaware of their rights under the BOCW Act. The government has largely failed to conduct large-scale awareness campaigns at the worksite level. Instead, the burden of information dissemination has fallen on Labour unions and NGOs, who have limited reach and resources. Without knowing that they are entitled to benefits, workers cannot demand them. This lack of rights consciousness is a strategic advantage for employers and a negligent failure on the part of the State. The lack of political will is perhaps the most deep-rooted barrier. Construction workers, being a migrant and floating population, often do not constitute a stable vote bank in the cities where they work. Their political power is fragmented across their home states and their workplaces. Consequently, their issues rarely find center-stage in political manifestos. While policies are made on paper, the lack of rigorous monitoring and accountability mechanisms ensures that they are rarely implemented in spirit. The diversion of BOCW funds for general infrastructure projects or political branding is a testament to this lack of commitment to worker welfare. Technological barriers have also emerged in recent years. While the push for Digital India is commendable, the mandatory linking of Aadhaar (biometric ID) with welfare benefits has led to widespread exclusion. Biometric failures, particularly for manual Labourers whose fingerprints are worn out due to hard physical work, have resulted in the denial of rations and pensions. The technological fix often ignores the ground reality of poor connectivity and digital illiteracy in rural and Labour camps. Instead of acting as an enabler, technology has, in many instances, become a new gatekeeper that excludes the most vulnerable. Finally, the lack of worker organization and collective bargaining power is a major hurdle. Only a small percentage of construction workers are members of trade unions. Without a collective voice, they are unable to pressure the Welfare Boards or the government for better services. The transient nature of their work makes it difficult to build long-term Labour associations. In the absence of such pressure groups, the State feels little urgency to reform the system. The struggle for social security as a human right, therefore, requires not just legal changes, but a fundamental shift in the power dynamics between Labour, capital, and the State.

V. Comparative Perspectives and Global Best Practices

To understand the potential for reform in India, it is useful to look at global models of social security for informal workers. Countries in Scandinavia and parts of Europe have moved toward Universal Social Protection (USP), where benefits are tied to citizenship or residency rather than specific employment contracts. This model de-links social security from the employer, making it truly portable and inclusive. While India's economic constraints may prevent the immediate adoption of a full-scale USP, the principle of social protection floors as advocated by the ILO provides a feasible middle ground. In Latin America, countries like Brazil (through the *Bolsa Família* program) and Uruguay have successfully integrated informal workers into the social security net using innovative registration and tax-based funding. Uruguay's Monotax system allows small-scale workers and contractors to pay a single, simplified tax that covers both their business obligations and their social security contributions. Such a system reduces the cost of compliance and encourages informal entities to enter the formal fold. India could explore similar simplified tax-cum-insurance models for small-scale construction contractors. Within India, the Kerala Model offers significant lessons. Kerala was one of the first states to establish functional Welfare Boards for various categories of informal workers, including construction Labourers. The success of the Kerala model lies in the high level of Labour mobilization and the proactive role of the state in ensuring that benefits reach the grassroots. The use of local self-government bodies (Panchayats) to identify and register workers has made the process more accessible and transparent. This decentralized approach could serve as a blueprint for other Indian states.

The concept of Social Security Credits used in some developed economies could also be adapted. In this system, even intermittent work is recorded in a centralized digital ledger, and the State or employer contributes credits toward a future pension. This accounts for the seasonal and irregular nature of construction work. Implementing such a system in India would require a robust national database a task that the e-Shram portal aims to achieve, provided it is backed by actual budget allocations and not just registration. Furthermore, the role of Transnational Social Security is becoming relevant as Indian construction workers increasingly migrate to the Gulf countries and Southeast Asia. The human rights framework necessitates that social security should follow the worker across borders. Bilateral Social Security Agreements (SSAs) are essential to ensure that workers do not lose their contributions when they move. While India has signed SSAs with several European countries, it has yet to secure strong agreements with

the primary destinations for its construction Labour force, leaving millions of overseas workers without a safety net. Learning from these global and local examples, it is clear that social security for construction workers must be built on three pillars: **Universality, Portability, and Adequacy**. The shift must be from a contributory model, which many poor workers cannot afford, to a tax-funded model for basic protections. By treating social security as a public good rather than a private benefit, India can move closer to fulfilling its international and constitutional obligations. The global shift toward Social Protection Floors suggests that even developing economies can afford to provide basic security if they prioritize it in their fiscal policy.

VI. Conclusion

The transition of social security from a discretionary welfare measure to a non-negotiable human right is the defining challenge for India's Labour policy in the 21st century. As this study has shown, while the legal framework in the form of the BOCW Act and the Constitution exists, the right remains a distant reality for millions of construction workers. The current system is plagued by administrative inefficiency, lack of portability, and a fundamental disconnect from the lived experiences of the workers. To continue on the current path is to accept a form of institutionalized exclusion that is inconsistent with the ideals of a modern democratic state.

To remedy this, the State must adopt a mission mode approach to the registration of construction workers. This involves taking the registration process to the doorsteps of the workers through mobile vans and worksite camps rather than expecting them to navigate distant government offices. The e-Shram portal must be integrated with the BOCW Welfare Boards to ensure that registration automatically leads to the provisioning of benefits. Technology should be used as a bridge, not a barrier, with offline alternatives provided to ensure that no worker is left behind due to a biometric or connectivity glitch. The financial architecture of the BOCW funds needs a complete overhaul. The massive idle funds must be put to use through an Automatic Benefit Transfer system. For instance, once a worker is registered, a basic insurance cover and accident benefit should be triggered automatically without requiring a separate claim process. Transparency in the collection and utilization of the cess must be ensured through public audits and real-time dashboards. The diversion of these funds for any purpose other than worker welfare should be made a punishable offense. Legislatively, the new

Labour Codes must be implemented in a way that strengthens, rather than dilutes, the specific protections for construction workers. There is a need for a National Social Security Card for all informal workers, which would allow them to access healthcare, rations, and pensions anywhere in the country. This would address the portability crisis and recognize the migrant worker as a national citizen with portable rights. Furthermore, the definition of employer in the construction sector must be widened to include the principal employer or the land owner, ensuring that accountability cannot be shifted down the sub-contracting chain.

Finally, the realization of social security as a human right requires the active participation of the workers themselves. The State must facilitate the collectivization of workers, allowing them a seat at the table in the management of Welfare Boards. Civil society and trade unions must continue to act as watchdogs, holding the State accountable to its promises. Social security is not a gift from the State; it is a return on the Labour that builds the nation. It is the price society pays for the Right to Life and Human Dignity.

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